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DAVIS WRIGHT TREMAINE, LLP/Seattle 1201 Third Avenue, Suite 2200 SEATTLE, WA 98101-3045				
			EXAMINER FLETCHER, MARLON T	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/975,748  
Filing Date: October 10, 2001  
Appellant(s): PHILLIPS ET AL.

**MAILED**

**FEB 08 2008**

**GROUP 2800**

Robert W. Bergstrom  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/18/2007 appealing from the Office action mailed March 15, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,735,451	Winsky et al.	4-1998
6,377,530	Burrows	4-2002

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winsky et al. (5,739,451).

As recited in claims 1, 12, and 18, Winsky et al. disclose a method and system for the display and control of music selection in a handheld portable multi-media device, the system comprising: a housing (12) sized to be held by a user as disclosed in the abstract and as seen in figure 1; a circuit board (figure 3) within the housing; a battery power supply to provide electrical power to electrical circuitry on the circuit board as is inherent in view of figures 1 and 3; a data structure (44) to store a plurality of music data files, each music selection data file having identification data associated therewith as discussed in column 3, line 62 through column 4, line 8; a display (16) to display data comprising a playlist indicating music data files to be played (abstract); an input device (14) operable by the user to select identification data associated with desired music data files for the playlist as discussed in column 4, lines 60-64; a processor (50) responsive to the input device to select the music data files for the playlist based on the

user selected identification data; a converter to receive the selected music data files and convert the selected music data files to audio data as discussed in column 4, lines 2-5; and an audio output driver (46) coupled to the converter to receive the audio data therefrom, the audio output driver further having an output and providing analog signals to the output for connection to an audio output device (52).

As recited in claims 2 and 13, Winsky et al. disclose the system, wherein the data structure contains music data files having different data format types as discussed in column 3, line 66 through column 4, line 5, wherein MIDI is preferably used; which indirectly infers that other formats may be used.

As recited in claims 3 and 14, Winsky et al. disclose the system, wherein the data associated with the stored music data files comprises song names and the display displays the song names, the user manually generating the playlist by operating the user input device to select song names and the processor generating the playlist based on the selected song names as discussed in the abstract.

Winsky et al. do not disclose a CODEC as the converter. However, CODECs are well known in the art for converting music data files into audio data. Winsky et. Al. further do not disclose metatags nor a plurality of data types.

However with respect to claims 4-8, 15, 16, and 19, Official Notice is taken with regards to it being well known in the art to use Codecs as converters and Metatags for data filing.

As recited in claim 9, Winsky discloses the system comprising a selection data structure wherein the playlist is stored for subsequent use as discussed in column 4, lines 27-35.

As recited in claim 10, Winsky et al. disclose the system, wherein the processor alters the stored playlist and wherein the altered playlist is stored for subsequent use as discussed in column 4, lines 50-56.

As recited in claims 11, 17, and 20, Winsky et al. disclose the system, wherein the processor is responsive to the input device to select music data files based on user-selection of a plurality of identification data associated with the music data files as discussed in column 4, lines 27-31 and lines 60-64.

It would have obvious to one of ordinary skill in the art at the time of the invention to utilize the well known teachings of a codec and metatags with the teachings of Winsky et al., because teachings only provide a means for accomplishing task which are accomplished through the apparatus, wherein the data files are obviously converted to audio data to be played through the speaker and the songs are selected by identification methods which are the same purpose of the metatags.

***Allowable Subject Matter***

3. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Burrows is cited as pertinent, because it discloses most of the features of the present invention and specifically discloses the use of a plurality of data types, a battery, and etc...

#### **(10) Response to Argument**

The applicant is arguing that Winsky et al. fails to disclose a playlist. The applicant states that "the current invention is directed to a creation, storage, retrieval, display, and playing of musical files represented by playlists." Clearly as seen in figures 3 -5, Winsky disclose each element listed above and wherein the comparative operation is discussed in the abstract. The applicant places a lot of emphasis on the word "playlist" and argues the term throughout his arguments. A playlist is a merely a selection of songs. However, a playlist can also contain a single song, if a user wishes to only have a single song in his or her playlist. The applicant argues that Winsky et al. do not disclose the term "playlist". However, the term is define as a list of songs and Winsky et al. provides the equivalent. It is not necessary to use the same terminology if the same or the equivalent is provided. Also it is clear that Winsky et al. provides the storage of multiple songs, which clearly indicates that Winsky et al. is capable of playing and listing multiples songs, wherein any order would provide a sequence of songs to be played or played. The applicant states "the term "playlist" is a well-understood ... term in the field .... such as the Apple iPod device." This submission alone states that the

present invention provides nothing new, wherein the current claims can be rejected using the Apple iPod device. Winsky et al discloses all of the rejected elements in the present invention. Winsky et al. clearly provides a hand held portable device which stores audio/music data, wherein identification data is provided for storing and retrieving audio data, which is outputted through a speaker. For these reasons, the claims remain rejected as discussed above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Marion Fletcher

Conferees:

Lincoln Donovan (L)

Drew Dunn 